

4/9/2017 10:03:25 AM  
16CV08504

IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR MULTNOMAH COUNTY

A.M., a minor, by and through her  
Conservator, Tim Nay; and R.M., a  
minor, by and through his  
Conservator, Beagle and Associates of  
Oregon, Inc.,

Plaintiffs,

v.

JOHN HENRY YATES; DANIELLE  
YVONNE YATES; YAKIMA VALLEY  
FARM WORKERS CLINIC, INC., a  
Washington Nonprofit Corporation;  
PHYSICIANS' MEDICAL CENTER,  
P.C.; BRENT W. HEIMULLER, M.D.,

Defendants.

Case No. 16CV08504

**FIRST AMENDED COMPLAINT**

Abuse of a Vulnerable Person (ORS  
124.105); Sexual Abuse; Physical Abuse;  
Intentional Infliction of Emotional  
Distress; Negligence

(Not Subject to Mandatory Arbitration;  
Jury Trial Demanded)

(Filing fee: ORS 21.160(1)(e) - \$1,056.00;  
Amount of Prayer: \$10,000,000 Per Child,  
Subject to ORS 124.100(2)(a) and (b))

Plaintiffs allege:

**GENERAL ALLEGATIONS**

1.

A.M. is a 7 year-old girl, born in August 2009. Plaintiff Tim Nay is a  
professional fiduciary and the duly-appointed conservator for A.M.

1 2.

2 R.M. is a 6 year-old boy, born in December 2010. Plaintiff Beagle and  
3 Associates of Oregon, Inc., is a professional fiduciary and the duly-appointed  
4 conservator for R.M.

5 3.

6 Defendant John Henry Yates was at all times relevant a DHS-certified foster  
7 parent or DHS-approved durable guardian of A.M. and R.M., and an agent of DHS  
8 who was acting at relevant times within the course and scope of his agency with  
9 DHS.

10 4.

11 Defendant Danielle Yvonne Yates was at all times relevant a DHS-certified  
12 foster parent or DHS-approved durable guardian of A.M. and R.M., and an agent of  
13 DHS who was acting at relevant times within the course and scope of her agency  
14 with DHS.

15 5.

16 Defendant Yakima Valley Farm Workers, Inc. ("YVFWC"), is a Washington  
17 nonprofit corporation doing business through a network of community health  
18 centers operating services and programs in Washington and Oregon, including in  
19 Multnomah County, Oregon. Among the services offered are nutrition services for  
20

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1 caregivers and expecting mothers, including growth tracking to ensure children are  
2 growing at a healthy rate, nutrition education and advice for caregivers, and  
3 assistance finding healthcare and other community services. YVFWC is a recipient of  
4 federal funding from the Special Supplemental Nutrition Program for Women,  
5 Infants, and Children ("WIC"), and operates several WIC clinics including the  
6 Newberg WIC Clinic in Newberg, Oregon.

7 6.

8 Defendant Brent Heimuller, M.D., is a board certified pediatrician who at all  
9 times relevant, was operating within the course and scope of his employment for  
10 defendant Physicians' Medical Center, P.C., a multi-specialty group medical practice.

11 7.

12 In January 2011, A.M. and R.M. were taken into custody by the Oregon  
13 Department of Human Services ("DHS") and placed in foster care.

14 8.

15 In May 2012, A.M. and R.M. were placed in the foster home of John and  
16 Danielle Yates. On August 19, 2013, on the motion of DHS, a judgment was entered  
17 making the Yates durable guardians for A.M. and R.M., and the children remained in  
18 the Yates' care until December 17, 2014.

1 9.

2 On December 17, 2014, the Yates turned A.M. and R.M. over to their paternal  
3 aunt, J.M., after the guardianship was vacated by the court. Both children  
4 immediately asked J.M. for food, and when given healthy snacks, vomited, but  
5 continued to ask for food. Based on this behavior, as well as their extremely thin  
6 appearance and the presence of an injury in the shape of a loop on R.M.'s back, J.M.  
7 notified DHS. The children were taken to Randall Children's Hospital on December  
8 18, 2014, where they were found to have many markers of chronic starvation and  
9 malnutrition including elevated liver enzymes, protuberant abdomens, visible ribs,  
10 loose skin, short stature, emaciated appearance, anemia, low protein /albumin levels,  
11 low zinc and vitamin D levels, lanugo, and psychogenic polydipsia. The skin on  
12 R.M.'s feet and lower legs also had diffuse scaling, peeling, and plaques, and the skin  
13 on A.M.'s face and scalp had scaling. Both children were found to be at high risk of  
14 Refeeding Syndrome, a potentially life-threatening consequence of starvation  
15 consisting of metabolic disturbances that occur when nutrition is reinstituted.

16 10.

17 Upon admission to Randall Children's Hospital on December 18, 2014, A.M.  
18 weighed 30.4 lbs. and was in the 0<sup>th</sup> percentile on the growth chart. Her weight 2½  
19  
20

1 years earlier, shortly after her placement by DHS in the Yates' custody, was the same,  
2 i.e. 30.4 lbs., and at that time, she was in the 53<sup>rd</sup> percentile on the growth chart.

3 11.

4 Upon admission to Randall Children's Hospital on December 22, 2014, R.M.  
5 weighed 27.1 lbs. and was in the 0<sup>th</sup> percentile on the growth chart. His weight 2½  
6 years earlier, shortly after his placement by DHS in the Yates' custody, was 26.25 lbs.,  
7 which was in the 83<sup>rd</sup> percentile on the growth chart.

8 12.

9 A.M. and R.M. were hospitalized for eight days at Randall Children's  
10 Hospital to avoid the potentially life-threatening consequences of their chronic  
11 starvation. Upon discharge into the care of their paternal aunt, they demonstrated  
12 no difficulty in gaining weight when fed appropriately.

13 13.

14 While in the Yates home, A.M. and R.M. were subjected to starvation,  
15 withholding of food as discipline, withholding of medical care, isolation, physical  
16 abuse, verbal and emotional abuse, and disparagement of family of origin.

17 14.

18 In addition, as disclosed to J.M. and to medical professionals several months  
19 after her removal from the Yates home, A.M. was subjected to sexual abuse by John  
20

1 Yates, who touched her intimate parts for his own sexual gratification using his  
2 hands and penis.

3 15.

4 As a result of their abuse, neglect, and chronic starvation by the Yates', A.M.  
5 and R.M. are at risk for eating disorders, food insecurity and anxiety; stunted growth  
6 and development; reduced intellectual capabilities; disrupted neurodevelopment;  
7 social, emotional, and cognitive impairment; adoption of health-risk behaviors;  
8 disease, disability, and social problems; increased risk of violence and re-  
9 victimization; and early death.

10 16.

11 As a result of the abuse and neglect suffered while in the Yates' home, A.M.  
12 has suffered significant developmental delays including, but not limited to, delayed  
13 strength, endurance, fine motor skills, performance of activities of daily living, and  
14 cognition. Additionally, A.M. has suffered and will continue to suffer physical pain  
15 and discomfort, emotional injury and mental anguish, trauma, an inability to form  
16 close relationships, nightmares and sleep disruption, mistrust in the intentions of  
17 others, lack of self-esteem, depression, anxiety, and post-traumatic stress disorder, all  
18 to her human damage in an amount the jury determines in accordance with the law  
19 and the facts, not to exceed \$9,800,000.00, and she will incur future costs for  
20

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LAW OFFICE OF ERIN OLSON, P.C.  
2014 N.E. Broadway Street Portland, OR 97232-1511  
Telephone: (503) 546-3150 • Fax: (503) 548-4435  
E-mail: eolson@erinolsonlaw.com

1 counseling, occupational therapy, and other treatment and therapy in an amount to  
2 be determined by the jury at trial, not to exceed \$200,000.00.

3 17.

4 As a result of the abuse and neglect suffered while in the Yates' home, R.M.  
5 has suffered significant developmental delays including, but not limited to, delayed  
6 speech and self-help activities, decreased strength and balance, delayed fine motor  
7 skills, delayed comprehension, delayed visual perceptual skills, and delayed social  
8 skills. Additionally, R.M. has suffered and will continue to suffer physical pain and  
9 discomfort, emotional injury and mental anguish, trauma, an inability to form close  
10 relationships, nightmares and sleep disruption, mistrust in the intentions of others,  
11 lack of self-esteem, depression, anxiety, and post-traumatic stress disorder, all to his  
12 human damage in an amount the jury determines in accordance with the law and the  
13 facts, not to exceed \$9,800,000.00, and he will incur future costs for counseling,  
14 occupational therapy, and other treatment and therapy in an amount to be  
15 determined by the jury at trial, not to exceed \$200,000.00.

16 **FIRST CLAIM FOR RELIEF:**  
17 **ABUSE OF A VULNERABLE PERSON – ORS 124.105**

18 **(Against Defendants John and Danielle Yates)**

19 18.

20 Plaintiffs reallege and incorporate herein paragraphs 1-4 and 7-17.

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19.

A.M. and R.M. were at all relevant times vulnerable and entitled to the protection of ORS 124.100 *et seq.*, because they were incapacitated persons for purposes of ORS 124.100(1)(e)(C) and ORS 125.005(5) since a condition existed in which their abilities to receive and evaluate information effectively or to communicate decisions were impaired to such an extent that they did, at the relevant times, lack the capacity to meet the essential requirements for their physical health or safety, including those actions necessary to provide the health care, food, shelter, clothing, personal hygiene and other care without which serious physical injury or illness was likely to, and did, occur. Specifically, conditions existed such that A.M. and R.M. lacked a wide range of cognitive and functional abilities relating to receipt and evaluation of information and communication, including:

- (a) The ability to use and understand words, regardless of whether they were written or spoken;
- (b) The ability to communicate effectively with or otherwise engage others, including those who may have been in a position to help them meet their basic needs.
- (c) The ability to understand basic concepts related to self-care, medical treatment, common dangers, and personal safety;



- 1 (d) The ability to manage money or purchase necessities;
- 2 (e) The ability to understand (i) that they had the need and the right to be
- 3 fed regularly; (ii) that they had the need and right not to be abused by
- 4 others; (iii) that they had basic needs and rights to emotional security
- 5 and bodily integrity; and (iv) an understanding that they were being
- 6 physically abused and neglected, and with respect to A.M., sexually
- 7 abused;
- 8 (f) The ability to make or to communicate any decision that would cause
- 9 their essential requirements for physical health and safety to be met;
- 10 (g) Isolation from anyone who might have been able to help them, except
- 11 the perpetrators of their abuse;
- 12 (h) The ability to place phone calls, to communicate electronically, or in any
- 13 way to contact law enforcement or medical providers or anyone outside
- 14 the Yates' home to meet their needs;
- 15 (i) The ability to receive and evaluate information effectively or to
- 16 communicate decisions due to impairment by threats and coercion by
- 17 the Yates, as well as the physical and psychological effects of the ongoing
- 18 abuse being perpetrated against them by the Yates.
- 19
- 20

20.

The conduct of John and Danielle Yates as alleged in paragraphs 13-14 constituted physical abuse within the meaning of ORS 124.105(1)(a), (c), (d), and (h).

21.

As a result of the defendants' acts and omissions as alleged in this First Claim for Relief, A.M. and R.M. suffered the harm and damages alleged in paragraphs 15-17, and are entitled to amounts equal to three times their economic and non-economic damages, pursuant to ORS 124.100(2)(a) and (b).

22.

Plaintiffs are entitled to recover reasonable attorney fees pursuant to ORS 124.100(2)(c) and reasonable fees for the services of the conservators pursuant to ORS 124.100(2)(d).

**SECOND CLAIM FOR RELIEF:  
SEXUAL ABUSE (SEXUAL BATTERY)**

**(Against Defendant John Yates)**

23.

Plaintiff A.M. realleges and incorporates herein paragraphs 1, 3, 7-8, and 14-16.

24.

On more than one occasions between May 18, 2012 and December 17, 2013, John Yates sexually abused A.M. by touching her sexual or other intimate parts with his hand(s) and penis for the purpose of his own sexual gratification.

25.

As a result of the sexual abuse alleged in this claim, A.M. has suffered human damage in an amount the jury determines in accordance with the law and the facts, not to exceed \$5,000,000.00, and will incur future costs for counseling, occupational therapy, and other treatment and therapy in the amount determined by the jury at trial, not to exceed \$100,000.00. These amounts are included in, and not in addition to, those alleged in paragraphs 15-16.

**THIRD CLAIM FOR RELIEF:  
PHYSICAL ABUSE (BATTERY)**

**(Against Defendants John and Danielle Yates)**

26.

Plaintiff R.M. realleges and incorporates herein paragraphs 2-4, 7-9, and 13.

27.

On one or more occasions between May 18, 2012 and December 17, 2013, John and/or Danielle Yates physically abused R.M. by striking him, including on at least

1 one occasion with an extension cord or other looped cord, causing him pain and  
2 physical injury.

3 28.

4 As a result of the physical abuse alleged in this claim, R.M. has suffered human  
5 damage in an amount the jury determines in accordance with the law and the facts, not to  
6 exceed \$2,000,000.00, and will incur future costs for counseling, occupational therapy, and  
7 other treatment and therapy in the amount determined by the jury at trial, not to exceed  
8 \$100,000.00. These amounts are included in, and not in addition to, those alleged in  
9 paragraphs 15-17.

10  
11 **FOURTH CLAIM FOR RELIEF:**  
12 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

13 **(Against Defendants John and Danielle Yates)**

14 29.

15 Plaintiffs reallege and incorporate herein paragraphs 18-28.

16 30.

17 A.M. and R.M. were subjected to cruel and unreasonable treatment while in the  
18 Yates' care, as alleged in paragraphs 13-14, that caused them extreme emotional  
19 distress.  
20

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1 31.

2 The actions and circumstances as set forth in paragraphs 13-14 and 18-28 were  
3 outrageous and beyond any reasonable limit of social toleration, and caused A.M.  
4 and R.M. the harms and damages alleged in paragraphs 15-17.

5 **FIFTH CLAIM FOR RELIEF – NEGLIGENCE**

6 **(Against Defendant Yakima Valley Farm Workers Clinic, Inc.)**

7 32.

8 Plaintiffs reallege and incorporate herein as though set forth in full  
9 paragraphs 1-5, 7-17, above.

10 33.

11 A.M. was seen at the Newberg WIC Clinic on numerous occasions  
12 beginning October 15, 2009, and ending August 14, 2014. Employees or agents of  
13 YVFWC recorded the following information concerning A.M.'s weight, weight for  
14 age (growth chart %), height, and height for age (growth chart %) on the dates  
15 indicated:

Date	Weight	Weight for Age	Height	Height for Age
10/15/2009	9 lbs 9 oz	19%	23 inches	36%
3/26/2010	16 lbs 3 oz	34%	27 inches	73%
8/31/2010	19 lbs 15 oz	31%	29 inches	61%
8/24/2011	27 lbs	55%	33 .25 inches	44%
12/20/2011	28 lbs 3 oz	53%	35.625 inches	71%
6/15/2012	30 lbs 4 oz	53%	36.25 inches	48%
12/18/2012	32 lbs 4 oz	53%	37.125 inches	31%
6/5/2013	30 lbs	16%	37.875 inches	24%
6/18/2013	28 lbs 8 oz	6%	37.75 inches	18%
8/6/2013	29 lbs 4 oz	8%	38 inches	19%
9/3/2013	27 lbs 8 oz	1%	38 inches	16%
10/8/2013	30 lbs	9%	38 inches	13%
11/8/2013	30 lbs	7%	38.125 inches	12%
12/13/2013	28 lbs 12 oz	2%	37.5 inches	4%
1/16/2014	30 lbs	4%	38.125 inches	6%
3/12/2014	27 lbs 12 oz	0%	38.625 inches	8%
4/11/2014	30 lbs 12 oz	4%	38.625 inches	6%
7/15/2014	27 lbs	0%	38.625 inches	2%
8/14/2014	27 lbs 12 oz	0%	38.75 inches	2%

34.

R.M. was seen at the Newberg WIC Clinic on numerous occasions beginning March 14, 2011, and ending August 14, 2014. Employees or agents of YVFWC recorded the following information concerning R.M.'s weight, weight for age (growth chart %), height, and height for age (growth chart %) on the dates indicated:

Date	Weight	Weight for Age	Height	Height for Age
3/14/2011	14 lbs 4 oz	71%	23.875 inches	46%
6/7/2011	18 lbs 10 oz	71%	26.125 inches	40%
9/1/2011	22 lbs 4 oz	77%	28.25 inches	51%
12/20/2011	24 lbs 10 oz	87%	30.5 inches	58%
6/15/2012	26 lbs 14 oz	83%	32.625 inches	59%
12/18/2012	28 lbs 12 oz	60%	34 inches	48%
6/5/2013	26 lbs 8 oz	13%	34.5 inches	20%
6/18/2013	25 lbs 4 oz	6%	34.5 inches	18%
8/6/2013	24 lbs 8 oz	2%	34.875 inches	15%
9/3/2013	25 lbs 4 oz	3%	34.875 inches	11%
10/8/2013	26 lbs 4 oz	5%	34.875 inches	8%
11/8/2013	27 lbs	8%	34.875 inches	6%
12/13/2013	26 lbs 12 oz	5%	34.875 inches	4%
1/16/2014	27 lbs 4 oz	6%	34.875 inches	2%
3/12/2014	26 lbs 12 oz	3%	35 inches	1%
4/11/2014	29 lbs	0%	35.125 inches	1%
7/15/2014	24 lbs 12 oz	0%	35.125 inches	0%
8/14/2014	24 lbs 8 oz	0%	35.25 inches	0%

35.

Beginning June 15, 2012, A.M. and R.M. were brought in for their visits to the Newberg WIC Clinic by Danielle Yates, who was known to employees or agents of YVFWC to be the children's foster parent.

36.

Beginning June 15, 2012 and until December 17, 2014 when they were removed from the home of Danielle and John Yates on December 17, 2014, YVFWC employees or agents saw the children no less than thirteen times.

1 37.

2 YVFWC, by and through its employee or agents, was negligent in one or  
3 more of the following ways, which caused injury to A.M. and R.M.:

- 4 a. In failing to coordinate nutrition care for A.M. and R.M. with their health  
5 care providers;
- 6 b. In failing to follow-up for the high-risk level identified for A.M. and R.M.  
7 due to their low weight, small stature, and slow growth;
- 8 c. In failing to identify, implement, and follow through with a plan for  
9 future intervention that addressed the risks to A.M. and R.M.
- 10 d. In failing to make a mandatory report of child abuse or neglect, as was  
11 required by ORS 419B.010 and WIC Policy 450 ¶7.1.

12 38.

13 As a result of YVFWC's negligence as alleged in this claim, A.M. and R.M.  
14 each suffered the harms and losses described in paragraphs 9-17.

15 **SIXTH CLAIM FOR RELIEF – NEGLIGENCE**

16 **(Against Defendants Physicians' Medical Center, P.C. & Brent W. Heimuller, M.D.)**

17 39.

18 Plaintiffs reallege and incorporate herein as though set forth in full  
19 paragraphs 1-17, above.

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1 40.

2 At all times relevant, Dr. Heimuller and PMC held themselves out as  
3 providers of pediatric services who were committed to providing expert care with a  
4 personal touch for infants, young children, and teens.

5 41.

6 Dr. Heimuller conducted a well child exam of A.M. on November 5, 2013,  
7 during which A.M.'s weight was recorded as 27.8 lbs and her height was recorded as  
8 38.2 inches, putting her in approximately the 0<sup>th</sup> weight-for-age percentile on the  
9 CDC Growth Chart and in approximately the 10<sup>th</sup> stature-for-age percentile on the  
10 CDC Growth Chart. Dr. Heimuller noted "weight gain issues" and offered a  
11 "nutritionist consult locally if desired," but noted her general appearance as "Well  
12 appearing child, appropriate for age, no acute distress."

13 42.

14 Dr. Heimuller conducted a well child exam of R.M. on December 5, 2013,  
15 during which R.M.'s weight was recorded as 25.8 lbs and his height was recorded as  
16 34.5 inches, putting him below the 3<sup>rd</sup> weight-for-age percentile on the CDC Growth  
17 Chart and below the 3<sup>rd</sup> stature-for-age percentile on the CDC Growth Chart. Dr.  
18 Heimuller noted "diffusely dry skin," delayed social skills, delayed language, with  
19  
20

1 “speech development closer to a 2 year old,” but noted his general appearance as  
2 “Well appearing child, appropriate for age, no acute distress.”

3 43.

4 At the time of his examinations of A.M. and R.M. in November and  
5 December of 2013, Dr. Heimuller had the information from YVFWC through October  
6 8, 2013 as is set forth in paragraphs 33 and 34, as well as records from their former  
7 pediatrician showing the results of their well-child checks from March 2012 through  
8 April 2013.

9 44.

10 PMC and Dr. Heimuller were negligent in one or more of the following  
11 ways, which caused injury to A.M. and R.M.:

- 12 a. In failing to review or evaluate the children’s medical histories to  
13 properly assess their health;
- 14 b. In failing evaluate the children to determine the cause of their weight  
15 loss;
- 16 c. In failing to evaluate the children to determine the cause of their growth  
17 delays;
- 18 d. In failing to evaluate R.M. to determine the cause of his developmental  
19 delays;

1 e. In failing to promptly treat the children for their severe, unexplained  
2 weight loss and growth delays;

3 f. In failing to make a mandatory report of child abuse or neglect, as was  
4 required by ORS 419B.010.

5 45.

6 As a result of the negligence of Dr. Heimuller and PMC as alleged in this  
7 claim, A.M. and R.M. suffered harm and damages as alleged in paragraph 38.

8 **PRAYER FOR RELIEF**

9 WHEREFORE, plaintiffs pray for judgment against defendants, and each of  
10 them, as follows:

11 1. On the First Claim for Relief for Abuse of a Vulnerable Person against  
12 defendants John Yates and Danielle Yates, as to each plaintiff:

- 13 a. Treble economic damages in the amount of \$600,000.00;
- 14 b. Treble non-economic damages in the amount of \$29,400,000.00;
- 15 c. Reasonable attorney fees pursuant to ORS 124.100(2)(c);
- 16 d. Reasonable fees for the services of the conservators pursuant to ORS  
17 124.100(2)(d); and
- 18 e. Costs and disbursements incurred herein.

1           2. On the Second Claim for Relief for Sexual Abuse (Sexual Battery) against  
2           defendant John Yates, as to A.M.:

- 3               a. Economic damages in the amount of \$100,000.00;  
4               b. Non-economic damages in the amount of \$5,000,000.00; and  
5               c. Costs and disbursements incurred herein.

6           3. On the Third Claim for Relief for Physical Abuse (Battery) against  
7           defendants John Yates, and Danielle Yates, as to R.M.:

- 8               a. Economic damages in the amount of \$100,000.00;  
9               b. Non-economic damages in the amount of \$2,000,000.00;  
10              c. Costs and disbursements incurred herein.

11          4. On the Fourth Claim for Relief for Intentional Infliction of Emotional  
12          Distress against defendants John Yates and Danielle Yates, as to each  
13          plaintiff:

- 14              a. Economic damages in the amount of \$200,000.00;  
15              b. Non-economic damages in the amount of \$9,800,000.00; and  
16              c. Costs and disbursements incurred herein.

17          5. On the Fifth Claim for Relief for Negligence against defendant Yamhill  
18          Valley Farm Workers Clinic, Inc., as to each plaintiff:

- 19              a. Economic damages in the amount of \$200,000.00;  
20

1                   b. Non-economic damages in the amount of \$9,800,000.00; and

2                   c. Costs and disbursements incurred herein.

3           6. On the Sixth Claim for Relief for Negligence against defendants Brent W.

4           Heimuller, M.D., and Physicians' Medical Center, P.C., as to each plaintiff:

5                   a. Economic damages in the amount of \$200,000.00;

6                   b. Non-economic damages in the amount of \$9,800,000.00; and

7                   c. Costs and disbursements incurred herein.

8           Dated: March 22, 2017.

9                                   LAW OFFICE OF ERIN OLSON, P.C.

10                               s/ Erin K. Olson

Erin K. Olson, OSB 934776

Attorney for Plaintiff R.M.

E-mail: eolson@erinolsonlaw.com

12                               PAULSON COLETTI TRIAL ATTORNEYS,  
13                               P.C.

14                               s/ Jane Paulson

Jane Paulson, OSB 911804

Attorney for Plaintiff A.M.

E-mail: jane@paulsoncoletti.com

16                               Trial Attorneys: Erin K. Olson & Jane Paulson

**Certificate of Service**

This is to certify that on March 22, 2017, I caused to be served a true and correct copy of the foregoing on the below-listed counsel for the appearing parties via prepaid, U.S. Mail:

James S. Smith, Sr. AAG  
Oregon Department of Justice  
100 SW Market Street  
Portland, OR 97201  
*Attorney for State of Oregon Defendants*

Jane Paulson  
Paulson Coletti  
1022 NW Marshall St Ste 450  
Portland OR 97209  
*Attorney for Plaintiff A.M.*

Thurl Stalnaker Jr.  
405 N.W. 18<sup>th</sup> Avenue, Suite 200  
Portland, OR 97209  
*Attorney for John Yates*

Danielle Yates, SID 14760619  
Coffee Creek Correctional Institution  
24499 SW Grahams Ferry Road, Suite U  
Wilsonville, OR 97070  
*Pro Se Civil Case Defendant*

s/ Erin K. Olson  
Erin K. Olson